

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
FIRSTENERGY SOLUTIONS CORP., et al. <sup>1</sup>	)	Case No. 18-50757
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	Hon. Alan M. Koschik
	)	
FIRSTENERGY SOLUTIONS CORP.,	)	
FIRSTENERGY GENERATION, LLC,	)	Adversary Proceeding No. 18-05021
	)	
Plaintiffs,	)	
	)	
OFFICIAL COMMITTEE OF UNSECURED	)	
CREDITORS, PASS-THROUGH	)	
CERTIFICATEHOLDERS, and AD HOC	)	
NOTEHOLDER GROUP,	)	
	)	
Plaintiff-Intervenors,	)	
	)	
v.	)	
	)	
FEDERAL ENERGY REGULATORY	)	
COMMISSION,	)	
	)	
Defendant,	)	
	)	
OHIO VALLEY ELECTRIC CORP., and KRAYN	)	
WIND LLC,	)	
	)	
Defendant-Intervenors.	)	

**OHIO VALLEY ELECTRIC CORPORATION'S STATEMENT OF ISSUES AND  
DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL FROM  
THE MAY 11, 2018 PRELIMINARY INJUNCTION ORDER**

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: FE Aircraft Leasing Corp. (9245), case no. 18-50759; FirstEnergy Generation, LLC (0561), case no. 18-50762; FirstEnergy Generation Mansfield Unit 1 Corp. (5914), case no. 18-50763; FirstEnergy Nuclear Generation, LLC (6394), case no. 18-50760; FirstEnergy Nuclear Operating Company (1483), case no. 18-50761; FirstEnergy Solutions Corp. (0186); and Norton Energy Storage L.L.C. (6928), case no. 18-50764. The Debtors' address is: 341 White Pond Dr., Akron, OH 44320.

Ohio Valley Electric Corporation (“OVEC” or “Appellant”) hereby provides, pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure the following statement of issues and designation of the items to be included in the record in connection with Appellant’s appeal from the *Preliminary Injunction Against the Federal Energy Regulatory Commission* [Adv. Proc. Docket No. 114] (the “Preliminary Injunction”) entered on May 11, 2018 by the United States Bankruptcy Court for the Northern District of Ohio (the “Bankruptcy Court”).

### **STATEMENT OF ISSUES ON APPEAL**

1. Does FERC’s public interest review of a FERC-jurisdictional wholesale power agreement constitute “an action or proceeding by a governmental unit . . . to enforce such governmental unit’s . . . regulatory power,” 11 U.S.C. § 362(b)(4), such that the FERC review process is excepted from the Bankruptcy Code’s automatic stay provision, 11 U.S.C. § 362(a)?

2. Does either 11 U.S.C. § 362(a) or § 105(a) give a bankruptcy court the power to enjoin FERC from conducting its statutorily mandated public interest review of the rejection of FERC-regulated wholesale power agreements?

3. Does 11 U.S.C. § 365(a)—the Bankruptcy Code’s provision governing the rejection of executory contracts—authorize Debtors to stop performing on a FERC-regulated wholesale power agreement before FERC has reviewed and approved of Debtors’ unilateral decision to modify the terms of that agreement?

4. Does FERC have exclusive jurisdiction over the public interest review of modifications to FERC-regulated power purchase agreements?

5. If the bankruptcy court has jurisdiction over the rejection of FERC-regulated wholesale power agreements, to what extent and under what standard are the Debtors authorized to reject the wholesale power agreements at issue without seeking approval from FERC?

### **DESIGNATION OF RECORD ON APPEAL**

Appellant hereby designates the following items to be included in the record on appeal, which includes all exhibits and addenda attached thereto and filed therewith and all documents incorporated by reference therein:

	<b>Item</b>	<b>Filing/Entry Date</b>	<b>Docket No.<sup>2</sup></b>
1.	Transmittal of Certification Order for Direct Appeal to the United States Court of Appeals for the Sixth Circuit	June 13, 2018	147
2.	Order Granting Ohio Valley Electric Corporation's Motion to Certify Preliminary Injunction Order for Direct Appeal to the United States Court of Appeals for the Sixth Circuit	June 13, 2018	146
3.	FERC's Joinder of Motion to Certify Preliminary Injunction Order for Direct Appeal to the United States Court of Appeals for the Sixth Circuit	June 7, 2018	142
4.	Clerk's Transmission of FERC's Notice of Appeal to the District or BAP Clerk	June 1, 2018	139
5.	FERC's Notice of Appeal and Statement of Election	June 1, 2018	136
6.	Krayn Wind, LLC' Transmission of Notice of Appeal to the District or BAP Clerk	June 1, 2018	135
7.	Joinder of Krayn Wind LLC in and to Motion of Ohio Valley Electric Corporation to Appeal the Preliminary Injunction Order as of Right, or in the Alternative, Requesting Leave	May 31, 2018	134
8.	Joinder of Krayn Wind LLC in and to Motion of Ohio Valley Electric Corporation to Certify Preliminary Injunction Order to the United States Court of Appeals for the Sixth Circuit Under 28 U.S.C. § 158(d)(2)	May 31, 2018	133
9.	Notice of Appeal and Statement of Election by Krayn Wind LLC of Preliminary Injunction Order	May 31, 2018	132
10.	Ohio Valley Electric Corporation's Motion To Appeal The Preliminary Injunction Order As of Right, Or In The Alternative, Requesting Leave	May 31, 2018	131

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<sup>2</sup> Unless otherwise indicated, all reference herein to "Docket No." shall be to the docket maintained for the above-captioned adversary proceeding.

	<b>Item</b>	<b>Filing/Entry Date</b>	<b>Docket No.<sup>2</sup></b>
11.	Ohio Valley Electric Corporation's Motion To Certify Preliminary Injunction Order For Direct Appeal To The United States Court of Appeals For The Sixth Circuit	May 31, 2018	129
12.	Clerk's Transmission of Ohio Valley Electric Corporation's Notice of Appeal to the District of BAP Clerk	May 31, 2018	128
13.	Ohio Valley Electric Corporation's Notice of Appeal and Statement of Election	May 31, 2018	127
14.	Memorandum Decision Supporting Order Granting Preliminary Injunction	May 18, 2018	125
15.	Preliminary Injunction Against the Federal Energy Regulatory Commission	May 11, 2018	114
16.	Stipulation of Uncontested Facts	May 10, 2018	112
17.	Official Committee of Unsecured Creditors' Reply Memorandum of Law in Support of Motion for Preliminary Injunction	May 7, 2018	110
18.	Reply in Further Support of the Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for a Preliminary Injunction Against the Federal Energy Regulatory Commission	May 7, 2018	109
19.	Amicus Brief of Certain Sponsoring Companies in Opposition to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Energy Regulatory Commission	May 7, 2018	107
20.	Order Granting Motion of Certain Sponsoring Companies to File an Amicus Brief in Opposition to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Energy Regulatory Commission	May 4, 2018	106
21.	Order Granting Pass-Through Certificateholders' and Ad Hoc Noteholder Group's Joint Motion to Intervene in Adversary Proceeding No. 18-05021	May 3, 2018	98
22.	FERC's Joinder of Motion for Abstention or, in the Alternative, Referral Under the Doctrine of Primary Jurisdiction	May 2, 2018	95
23.	FERC's Objection to Joint Motion of the Pass-Through Certificateholders and the Ad Hoc Noteholder Group to Intervene in Adversary Proceeding No. 18-05021	May 2, 2018	94
24.	Ohio Valley Electric Corporation's Opposition to Joint Motion of the Pass-Through Certificateholders and the Ad Hoc Noteholder Group to Intervene in Adversary Proceeding No. 18-05021	May 2, 2018	93

	<b>Item</b>	<b>Filing/Entry Date</b>	<b>Docket No.<sup>2</sup></b>
25.	Ohio Valley Electric Corporation's Motion for Abstention or, in the Alternative, Referral Under the Doctrine of Primary Jurisdiction	May 1, 2018	91
26.	Appendix of Exhibits in Support of Objection and Memorandum of Law of Krayn Wind LLC in Opposition to Plaintiffs' Ex Parte Motion for Temporary Restraining Order and Injunction Against Federal Energy Regulatory Commission	Apr. 30, 2018	87
27.	Objection and Memorandum of Law of Krayn Wind LLC in Opposition to Plaintiffs' Ex Parte Motion for Temporary Restraining Order and Injunction Against Federal Energy Regulatory Commission	Apr. 30, 2018	86
28.	Defendant Federal Energy Regulatory Commission's Opposition to the Plaintiffs' Motion for a Preliminary Injunction	Apr. 30, 2018	85
29.	Ohio Valley Electric Corporation's Opposition to Preliminary Injunction Motion; Declaration of Justin J. Cooper in Support of Ohio Valley Electric Corporation's Opposition to Preliminary Injunction Motion; Declaration of Mark McKane, P.C. in Support of Ohio Valley Electric Corporation's Opposition to Preliminary Injunction Motion	Apr. 30, 2018	84, 84-1, 84-2
30.	Motion of Certain Sponsoring Companies to File an Amicus Brief in Opposition to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Energy Regulatory Commission	Apr. 30, 2018	81
31.	Declaration of Gary Svirsky in Support of Joint Motion of the Pass-Through Certificateholders and the Ad Hoc Noteholder Group to Intervene in Adversary Proceeding No. 18-05021	Apr. 27, 2018	78
32.	Joint Motion of the Pass-Through Certificateholders and the Ad Hoc Noteholder Group to Intervene in Adversary Proceeding No. 18-05021	Apr. 27, 2018	77
33.	Agreed Order Granting Application of Krayn Wind LLC to Intervene in Adversary Proceeding No. 18-05021	Apr. 26, 2018	73
34.	Order Granting Motion of Official Committee of Unsecured Creditors to Intervene in Adversary Proceeding	Apr. 25, 2018	69
35.	Order Granting Motion of Official Committee of Unsecured Creditors for Expedited Consideration of Motion to Intervene in Adversary Proceeding	Apr. 25, 2018	68
36.	Motion of Official Committee of Unsecured Creditors to Intervene in Adversary Proceeding	Apr. 24, 2018	63

	<b>Item</b>	<b>Filing/Entry Date</b>	<b>Docket No.<sup>2</sup></b>
37.	Agreed Order Granting Ohio Valley Electric Corporation's Motion to Intervene in Adversary Proceeding No. 18-05021	Apr. 16, 2018	53
38.	Amended Temporary Restraining Order Against Federal Energy Regulatory Commission	Apr. 16, 2018	52
39.	Ohio Valley Electric Corporation's Motion to Intervene in Adversary Proceeding No. 18-05021	Apr. 3, 2018	16
40.	Ex Parte Temporary Restraining Order Against Federal Energy Regulatory Commission	Apr. 2, 2018	11
41.	Declaration of David M. Zensky in Support of the Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for Preliminary and Permanent Injunction and Ex Parte Temporary Restraining Order Against the Federal Energy Regulatory Commission	Apr. 1, 2018	8
42.	Declaration of Kevin T. Warvell In Support Of: (1) The Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC For Preliminary And Permanent Injunction And Ex Parte Temporary Restraining Order Against The Federal Energy Regulatory Commission; And (2) The Motion For Entry of An Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC To Reject Certain Energy Contracts; And (3) The Motion For Entry of An Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC To Reject A Certain Multi-Party Intercompany Power Purchase Agreement With The Ohio Valley Electric Corporation	Apr. 1, 2018	7, 47*
43.	Expert Declaration of Judah L. Rose In Support Of: (1) The Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC For Preliminary And Permanent Injunction And Ex Parte Temporary Restraining Order Against The Federal Energy Regulatory Commission; And (2) The Motion For Entry of An Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC To Reject Certain Energy Contracts; And (3) The Motion For Entry of An Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC To Reject A Certain Multi-Party Intercompany Power Purchase Agreement With The Ohio Valley Electric Corporation	Apr. 1, 2018	6, 46*

	<b>Item</b>	<b>Filing/Entry Date</b>	<b>Docket No.<sup>2</sup></b>
44.	Expert Declaration of David Gerhardt In Support Of: (1) The Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC For Preliminary And Permanent Injunction And Ex Parte Temporary Restraining Order Against The Federal Energy Regulatory Commission; And (2) The Motion For Entry of An Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC To Reject Certain Energy Contracts; And (3) The Motion For Entry of An Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC To Reject A Certain Multi-Party Intercompany Power Purchase Agreement With The Ohio Valley Electric Corporation	Apr. 1, 2018	5, 48*
45.	Memorandum of Law in Support of the Motion of FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC for Ex Parte Temporary Restraining Order and Preliminary Injunction Against the Federal Energy Regulatory Commission	Apr. 1, 2018	4
46.	Plaintiffs' Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction Against Federal Energy Regulatory Commission	Apr. 1, 2018	3
47.	Complaint For Declaratory Judgment, Preliminary And Permanent Injunction Against The Federal Energy Regulatory Commission	Apr. 1, 2018	1
48.	Voluntary Petition for Non-Individuals Filing for Bankruptcy filed by FirstEnergy Solutions Corp.	Mar. 31, 2018	1*
49.	Motion For Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject a Certain Multi-Party Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation as of the Petition Date	Apr. 1, 2018	44*
50.	Motion For Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject Certain Energy Contracts as of the Petition Date	Apr. 1, 2018	45*
51.	Ohio Valley Electric Corporation's Motion to Withdraw Reference of the Motion For Entry of an Order Authorizing FirstEnergy Solutions Corp. And FirstEnergy Generation, LLC to Reject a Certain Multi-Party Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation as of the Effective Date	Apr. 2, 2018	116*



	<b>Item</b>	<b>Filing/Entry Date</b>	<b>Docket No.<sup>2</sup></b>
52.	Duke Energy Ohio, Inc.'s Objection to Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject a Certain Multi-Party Intercompany Power Agreement with the Ohio Valley Electric Corporation as of the Petition Date	May 31, 2018	649*
53.	Ohio Valley Electric Corporation's Opposition to Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. And FirstEnergy Generation, LLC to Reject a Certain Multi-Party Intercompany Power Purchase Agreement With The Ohio Valley Electric Corporation as of the Petition Date	May 31, 2018	652*
54.	Objection to and Reservation of Rights of Krayn Wind LLC to Motion for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject Certain Energy Contracts as of the Petition Date	May 31, 2018	653*
	<b>Hearing Transcript</b>	<b>Entry Date</b>	<b>Docket No.<sup>3</sup></b>
55.	Transcript of the Hearing Held on April 2, 2018	Apr. 3, 2018	13, 15
56.	Transcript of the Hearing Held on April 9, 2018	Apr. 12, 2018, Apr. 13, 2018	37, 39
57.	Transcript of the Hearing Held on April 10, 2018	Apr. 13, 2018	40, 41
58.	Transcript of the Hearing Held on April 24, 2018	Apr. 26, 2018	72
59.	Transcript of the Hearing Held on May 3, 2018	May 4, 2018	101
60.	Transcript of the Hearing Held on May 11, 2018	May 15, 2018	118
61.	Transcript of the Hearing Held on May 14, 2018	May 16, 2018	119
62.	Transcript of the Hearing Held on June 8, 2018	June 11, 2018	144

<sup>3</sup> Unless otherwise indicated, all reference herein to "Docket No." shall be to the docket maintained for the above-captioned adversary proceeding.



	<b>Joint Exhibit</b>	<b>Date</b>	<b>Exhibit No.<sup>4</sup></b>
63.	Amended and Restated Inter-Company Power Agreement, dated as of September 10, 2010	Sept. 10, 2010	D1
64.	FERC Letter to OVEC, Docket Nos. ER11-3181-000, ER11-3440-000, ER11-3441-000	May 23, 2011	D2
65.	FE Utilities Assignment and Assumption Agreement	Feb. 28, 2014	D3
66.	FEG Assignment and Assumption Agreement	Feb. 28, 2014	D4
67.	FirstEnergy Corporation 8-K	March 16, 2018	D5
68.	Market-Based Rate Authorization Letter Order from FERC to Krayn Wind LLC	Oct. 27, 2008	D8
69.	<i>Cal. Electricity Oversight Bd. Et al. v. Calpine Energy Serv. Et al.</i> , 114 F.E.R.C. P61,003 (2006)	Jan. 3, 2006	P-A
70.	Memo RE: Ohio Valley Electric Corporation Strategic Planning Group – Preliminary Options dated December 8, 2016	Dec. 8, 2016	P-B (Sealed)
71.	Email from Brian Chisling to employees of FirstEnergy Solutions Corp., AES Corporation; AEP Energy; Ohio’s Electric Cooperatives; Thompson Hine LLP; Duke Energy; LG&E and KU; Vectren; and Wolverine Power Supply Cooperative, Inc., copying employees of Simpson Thacher & Bartlett LLP and Ohio Valley Electric Corporation, RE: “*EXTERNAL* OVEC Strategic Planning Group --- Meeting Jan 18th in Columbus”, with attachment “Strategic Planning Group List_v2.docx” dated December 20, 2016	Dec. 20, 2016	P-C (Sealed)
72.	OVEC Finance – SPG Presentation dated January 18, 2017	Jan. 18, 2017	P-D (Sealed)
73.	Guggenheim Securities Presentation RE: Strategic Planning Group Discussion Materials dated February 2017	Feb., 2017	P-E (Sealed)
74.	Draft Term Sheet for the Ohio Valley Electric Corporation Step-up Provision dated February 6, 2017	Feb. 6, 2017	P-F (Sealed)

<sup>4</sup> All reference herein to “Exhibit No.” shall be to the exhibits admitted into evidence at the May 11, 2018 Preliminary Injunction hearing before the Honorable Judge Koschik in the above-captioned adversary proceeding.

	<b>Joint Exhibit</b>	<b>Date</b>	<b>Exhibit No.<sup>4</sup></b>
75.	Letter from Donald A. Moul, President & CNO, FirstEnergy Solutions Generation Companies via E-mail and U.S. Mail to David Schweizer, Manager, Generation Department, PJM Interconnection, L.L.C. RE: FirstEnergy Nuclear Generation, LLC: Davis-Besse Nuclear Power Station Unit 1, Beaver Valley Power Station Units 1-2, and Perry Nuclear Power Plant Unit 1, Deactivation Notice per Section 113.1 of PJM Open Access Transmission Tariff dated March 28, 2018	Mar. 28, 2018	P-G
76.	Letter from Donald A. Moul, President & CNO, FirstEnergy Solutions Generation Companies to Document Control Desk, U.S. Nuclear Regulatory Commission RE: Certification of Permanent Cessation of Power Operations for Beaver Valley Power Station Unit Nos. 1 and 2, Davis-Besse Nuclear Power Station, Unit No. 1, and Perry Nuclear Power Plant, Unit No. 1 dated April 25, 2018	Apr. 25, 2018	P-H
77.	Executory PPAs and OVEC ICPA as reference in Kevin Warvell declaration	Various	P-I (Sealed)
78.	Resume of Judah Rose	2018	P-K
79.	OVEC Sponsoring Company Market Capitalization Data	May 9, 2018	P-L
	<b>Defendants' Judicial Notice</b>	<b>Date</b>	<b>Judicial Notice No.<sup>5</sup></b>
80.	Complaint filed in <i>Ohio Valley Electric Corp. v. FirstEnergy Solutions Corp.</i> , Docket No. EL18-135 (Mar. 26, 2018) (the " <u>FERC Proceeding</u> ")	Mar. 26, 2018	DJ-1
81.	<i>Motion to Intervene of the Dayton Power and Light Company Under EL18-135</i> , filed in the FERC Proceeding on March 27, 2018	Mar. 27, 2018	DJ-2
82.	<i>Motion to Intervene of American Electric Power Service Corporation Under EL18-135</i> , filed in the FERC Proceeding on March 29, 2018	Mar. 29, 2018	DJ-3

<sup>5</sup> All reference herein to "Judicial Notice No." shall be to all documents taken on judicial notice at the May 11, 2018 Preliminary Injunction hearing before the Honorable Judge Koschik in the above-captioned adversary proceeding, as noted in *Memorandum Decision Supporting Order Granting Preliminary Injunction* pg. 4, fn. 2 [Adv. Proc. Docket No. 125].

	<b>Defendants' Judicial Notice</b>	<b>Date</b>	<b>Judicial Notice No.<sup>5</sup></b>
83.	<i>Motion to Intervene of Electric Power Supply Association Under EL18-135</i> , filed in the FERC Proceeding on April 11, 2018	Apr. 11, 2018	DJ-4
84.	<i>Motion of National Rural Electric Cooperative Association to Intervene in Support of Complainant Ohio Valley Electric Corporation</i> , filed in the FERC Proceeding on April 16, 2018	Apr. 16, 2018	DJ-5
85.	<i>Motion to Intervene of the Environmental Law and Policy Center</i> , filed in the FERC Proceeding on April 16, 2018	Apr. 16, 2018	DJ-6
86.	<i>Motion to Intervene and Comments in Support of Louisville Gas and Electric Company and Kentucky Utilities Company</i> , filed in the FERC Proceeding on April 16, 2018	Apr. 16, 2018	DJ-7
87.	<i>Motion to Intervene of American Municipal Power, Inc. Under EL18-135</i> , filed in the FERC Proceeding on April 16, 2018	Apr. 16, 2018	DJ-8
88.	<i>Motions to Intervene of Wolverine Power Supply Cooperative, Inc. and Buckeye Power, Inc. and Joint Comments in Support of Ohio Valley Electric Corporation's Complaint</i> , filed in the FERC Proceeding on April 16, 2018	Apr. 16, 2018	DJ-9
89.	<i>Motion to Intervene of EDP Renewables North America LLC Under EL18-135</i> , filed in the FERC Proceeding on April 19, 2018	Apr. 19, 2018	DJ-10
90.	<i>Motion to Intervene, Preliminary Comments, and Motion for an Extension of Time to File Comments of Krayn Wind LLC</i> , filed in the FERC Proceeding on April 26, 2018	Apr. 26, 2018	DJ-11
91.	<i>Motion to Intervene of Duke Energy Ohio, Inc. Under EL 18-135</i> , filed in the FERC Proceeding on April 26, 2018	Apr. 26, 2018	DJ-12
92.	<i>Comments of the Indicated ICPA Sponsors in Support of Complaint</i> , filed in the FERC Proceeding on April 27, 2018	Apr. 27, 2018	DJ-13
93.	<i>Motion to Intervene and Protest of the Ad Hoc Group of Bruce Mansfield Certificateholders</i> , filed in the FERC Proceeding on April 30, 2018	Apr. 30, 2018	DJ-14
94.	<i>Motion to Intervene of the Office of the Ohio Consumers' Counsel Under EL18-135</i> , filed in the FERC Proceeding on April 30, 2018	Apr. 30, 2018	DJ-15
95.	<i>Comments of the Office of the Ohio Consumers' Counsel</i> , filed in the FERC Proceeding on April 30, 2018	Apr. 30, 2018	DJ-16

	<b>Defendants' Judicial Notice</b>	<b>Date</b>	<b>Judicial Notice No.<sup>5</sup></b>
96.	Consent Decree, dated March 18, 2005 ( <i>United States v. Ohio Edison Co.</i> , No. 2:99-cv-01181-EAS-TPK (S.D. Ohio), Dkt. No. 429)	Mar. 18, 2005	DJ-17
97.	<i>Declaration of Donald R. Schneider in Support of Chapter 11 Petitions and First Day Motions</i> [Bankr. Docket No. 55], dated April 1, 2018	Apr. 1, 2018	DJ-18
	<b>Plaintiffs' Judicial Notice</b>	<b>Date</b>	<b>Judicial Notice No.<sup>6</sup></b>
98.	Resp. by Boston Generating, LLC, et al. to This Court's November 1, 2010 Order to Show Cause, <i>In re: Boston Generating, LLC, et al.</i> , (S.D.N.Y. 2010) (No. 10 Civ. 6528 (DLC))	Nov. 5, 2010	AA
99.	Order Terminating Rulemaking Proceeding, Initiating New Proceeding, and Establishing Additional Procedures, 162 F.E.R.C. ¶ 61,012 (2018)	Jan. 8, 2018	BB
100.	Mot. For Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject Certain Energy Contracts as of the Pet. Date, <i>In re: FirstEnergy Solutions Corp, et al.</i> , (N.D. Ohio 2018) (No. 18-50757)	Apr. 1, 2018	CC
101.	Mot. for Entry of an Order Authorizing FirstEnergy Solutions Corp. and FirstEnergy Generation, LLC to Reject a Certain Multi-Party Intercompany Power Purchase Agreement with the Ohio Valley Electric Corporation as of the Pet. Date, <i>In re: FirstEnergy Solutions Corp., et al.</i> , (N.D. Ohio 2018) (No. 18-50757)	Apr. 1, 2018	DD
102.	Letter from Danielle A. Pham, Trial Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch via E-mail to David Zensky, Esq., Akin Gump Strauss Hauer & Feld LLP RE: Plaintiffs' First Set of Requests for Production of Documents and Requests for Admissions to Defendant Federal Energy Regulatory Commission dated April 23, 2018	Apr. 23, 2018	EE
103.	Order to Show Cause, <i>In re: Boston Generating, LLC et al.</i> , (S.D. N.Y. 2010) (10 Civ. 6528 (DLC))	Nov. 1, 2010	FF

<sup>6</sup> All reference herein to "Judicial Notice No." shall be to all documents taken on judicial notice at the May 11, 2018 Preliminary Injunction hearing before the Honorable Judge Koschik in the above-captioned adversary proceeding, as noted in *Memorandum Decision Supporting Order Granting Preliminary Injunction* pg. 4, fn. 2 [Adv. Proc. Docket No. 125].

	<b>Plaintiffs' Judicial Notice</b>	<b>Date</b>	<b>Judicial Notice No.<sup>6</sup></b>
104.	Document Requests Served by Plaintiffs on FERC	Apr. 19, 2018	GG
105.	Requests to Admit Served by Plaintiffs on FERC	Apr. 19, 2018	HH
106.	California State Parties' Notice of Withdrawal of Petition as Moot, and Req. to Vacate Interim Guidance Order or, in the Alternative Req. for Rehearing, Clarification and Order to Show Cause, <i>Cal. Electricity Oversight Bd. et al. v. Calpine Energy Serv. et al.</i> , 114 F.E.R.C. ¶ 51,003 (2006) (No. EL06-30)	Feb. 2, 2006	II
	<b>Other</b>	<b>Date</b>	
107.	Ohio Valley Electric Company's Presentation for May 11, 2018 Preliminary Injunction Hearing	May 11, 2018	

\* These references to "Docket No." shall be to the docket maintained for the main bankruptcy case captioned *In re FirstEnergy Solutions Corp.*, Case No. 18-50757 (Bankr. N.D. Ohio).

Appellant reserves the right to designate additional items for inclusion in the record and/or restate issues presented on appeal, including without limitations, the right to designate additional items or restate issues, if any relief is granted or denied subsequent to the filing of this designation that affects the Order and/or related documents. For items designated, the designation includes all documents referenced with the particular document number including, without limitation, all statements, appendices, exhibits, attachments, declarations, and affidavits related thereto.

**CERTIFICATION REGARDING TRANSCRIPTS**

Pursuant to Rule 8009(b)(1) of the Federal Rules of Bankruptcy Procedure, Appellant hereby certifies that it is not ordering any transcripts. All transcripts have been prepared and are filed on the docket and are designated in the foregoing designation on the record.

Dated: June 14, 2018

*/s/ Mark McKane, P.C.*

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*Counsel to Ohio Valley Electric Corporation*



**CERTIFICATE OF SERVICE**

I, Mark McKane, certify that on June 14, 2018, a true and correct copy of *Ohio Valley Electric Corporation's Statement Of Issues And Designation Of Items To Be Included In The Record On Appeal From The May 11, 2018 Preliminary Injunction Order* was served via the Court's Electronic Case Filing System on those entities and individuals who are listed on the Court's Electronic Mail Notice List.

/s/ Mark McKane, P.C.

Mark McKane, P.C.